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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/596,105	05/29/2007	Hans-Helmut Bechtel	PHDE030405 US	2071

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PHILIPS INTELLECTUAL PROPERTY & STANDARDS
P.O. BOX 3001
BRIARCLIFF MANOR, NY 10510

EXAMINER

HOLLWEG, THOMAS A

ART UNIT	PAPER NUMBER
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2879

MAIL DATE	DELIVERY MODE
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03/23/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Advisory Action Before the Filing of an Appeal Brief	Application No. 10/596,105	Applicant(s) BECHTEL ET AL.	
	Examiner Thomas A. Hollweg	Art Unit 2879	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 March 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☒ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: _____.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/NIMESHKUMAR D. PATEL/
Supervisory Patent Examiner, Art Unit 2879

Continuation of 11. does NOT place the application in condition for allowance because:

Applicant argues that finality of the Office Action of December 19, 2008, (hereinafter Final Action) was improper. In support of this argument, Applicant again presents the position that based on MPEP § 706.02, that the Office is obligated to provide a translation of the reference (JP 2003031355). This argument was responded to fully in the Final Action, which points out that the section of the MPEP relied on by the applicant specifically addresses "[p]rior art uncovered in searching the claimed subject matter." The Final Action further points out that the reference in question is not prior art uncovered in searching, but rather was first introduced into the record by applicant in an International Search Report (ISR) (Form PCT/ISA210) submitted by applicant under 35 U.S.C. § 371.

The Final Action points out that ISRs are the subject of MPEP § 1893.03(g) which states that "prior art documents may be cited by the examiner in the international search report," and that "[t]here is no requirement that the examiners list the documents on the PTO-892 form." The PTO-892 form is a Notice of References Cited, listing references that are first introduced into the record by the examiner. Because the reference in question was first introduced into the record by the applicant in an ISR, there is an expectation that the applicant had knowledge of the scope of the reference. Unlike a reference that was uncovered in searching the claimed subject matter, the Office is not obligated to provide a translation of the reference in question under MPEP § 706.02.

Examiner's arguments presented in the Final Action have not been addressed in the present Amendment After Final. Therefore, applicant's arguments are not found persuasive, as they were not found persuasive in the amendment prior to the Final Action.

Applicant further argues that the prior art reference (JP 2003031355) does not anticipate claim 1. Without addressing the issue as to whether applicant's amendment has changed the scope of claim 1, it is noted that applicant's argument addresses the amended, and not the original version of claim 1. Applicant argues that the isolating separator layer (10) shown in the prior art reference is transparent and not reflective. As applicant points out, the isolating separator layer (10) has a reflective coating (12). The claim addressed in the Final Action read "whereby the isolating separator layer (10) is reflective." The prior art isolating separator layer (10) having a reflective coating (12) anticipates this limitation, based on the broadest reasonable reading of the claim, giving each claim term their plain and ordinary meaning. Therefore, this argument is also not found persuasive.